IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

MFA.No. 1032 of 2001

AGAINST THE AWARD DATED 30/09/2000 IN O.P(MV).NO.811/1997 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA
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APPELLANT/PETITIONER:

MR. SAHJI,
S/O. THANKAPPAN,
ALUNKAL VEETTIL,
KANNATTU, PARAYAKADU.P.O.,
THURAVOOR,
KUTHIYATHODE PANCHAYATH.

BY ADV. SRI.P.VIJAYARAGHAVAN.

RESPONDENTS/RESPONDENTS:
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1. **SMT. LILLYKUTTY,**
   W/O. FRANCIS,
   BHATHANY BHAVAN,
   ARTHUNGAL.P.O., CHERTHALA,
   ALAPPUZHA DISTRICT.

2. **MR. SATHYANESAN, S/O. MADHAVAN,**
   MAROTTIKKAL VEETTIL, WARD NO. VIII,
   KUTHIYATHODE PANCHAYAT.

prv.

M.F.A. NO. 1032/2001:

3. THE UNITED INDIA INSURANCE CO. LTD., CHERTHALA, REPRESENTED BY ITS BRANCH MANAGER.

BY ADV. SRI.JOHN KOSHY.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

prv.

J.B.KOSHY & V.GIRI, JJ.

M.F.A.No.1032 OF 2001

Dated 22nd August, 2007

JUDGMENT

Koshy,J.

Appellant, a police constable, sustained personal injuries due to a motor accident on 29.12.1996. The Tribunal though found that the accident occurred due to the negligence of the driver of the vehicle insured by the third respondent insurance company awarded only a total compensation of Rs.61,850/= against a claim of Rs.3,47,500/=. Quantum of compensation alone is disputed in this appeal. Ext.A5 is the wound certificate issued from SNMM Hospital, Cherthala. The injuries noted therein are "Lacerated wound exposing tendon over the right thumb with swelling haematoma with restricted movement. Fracture of the bone + skin, swelling of the left feet dorsal aspect". Ext.A5 further shows that he was referred to Medical Trust Hospital, Ernakulam. Ext.A6 is the medical certificate issued by Dr.CNP Nair, SNMM Hospital, Cherthala. It is stated in Ext.A6 that the claimant was brought to that hospital on 29.12.96 with multiple injuries sustained in the accident and he was referred to plastic surgery Dept. of Specialists' Hospital, Ernakulam for expert management. Ext.A7 is the case summary of Specialists' Hospital, Ernakulam. The final diagnosis in Ext.A7 is that –

Crush injury (R) thumb-ischaemic. Ext.A8 is the certificate of medical treatment issued from Specialists' Hospital showing that the claimant was admitted there on 22.1.97 and treated for injury thumb and discharged on 24.1.97. Ext.A9 reference card shows that the claimant was admitted there on 22.1.97 and debridment SSG operation was done on 23.1.97 and discharged on 24.1.97. Ext.A10 series are prescription slips. Ext.A11 series are medical bills amounting to Rs.34,622.22. Ext.A12 is the permanent disability certificate issued by Dr.Jose Kuriyan Kattukaran, Civil Surgeon & Ortho Surgeon, Govt. Maharaja's Hospital, Kochi. In Ext.A12 it is stated that on examination the claimant has limitation of flexion and dorsum of rt.P&P joint of thumb due to partial ankylosis of the P&P joint due to trauma, malunited fracture of the right thumb, loss of sensation of thumb distal to the site of injury to right thumb, ugly tender scar on the dorsum of right thumb. Functionally he is having difficult to hold between thumb and finger, to pull or push with right thumb, to grip with right thumb, to rotate the right thumb. The doctor assessed the permanent disability of the petitioner as 9%. The Tribunal, taking note of the fact that his earnings are not affected as he was not discharged from the service, awarded only Rs.10,000/= for disability and Rs.9,600/= for loss of future earning power after his

retirement and only Rs.5,000/= was awarded for pain and sufferings. It is submitted that no leave salary was paid even though he was on leave for three and a half months. We are of the view that since his earnings are not affected and his retirement income also was not affected, he cannot be granted compensation on the basis of the salary received by him at the time of accident as per the formula set out in the second schedule. At the same time, considering the nature of injuries he sustained, he deserves more compensation especially age of retirement is 55. A retired police constable can get a better job if he had no disability and that has to be taken into account while awarding compensation. It is also submitted by the appellant that in view of the disability of the right hand he is unable to write and this has affected his promotional prospects. The Tribunal has taken only 5% disability while calculating the compensation for disability even though Ext.A12 certificate, assessing 9% disability, produced was unchallenged and marked by consent. Taking into account all these circumstances, we award Rs.10,000/= more for loss of earning power and disability and its consequences including loss of amenities. We also note that there was a fracture, he was treated as an inpatient for 25 days and two operations were conducted. We award Rs.5,000/= more for pain and sufferings. His monthly income was Rs.5,000/=.

He was on leave for three and a half months. According to the Tribunal, it was not proved that he was on loss of pay leave. According to the appellant, there is no medical leave as such and after adjusting the eligible leave, balance will be only loss of pay and also submitted that even if eligible leave is taken, he will be prevented from getting further leave. Taking into account all these facts, we award Rs.10,000/- for loss of actual earnings during the period of treatment. Thus, the additional compensation payable will be Rs.25,000/=. The above Rs.25,000/= should be deposited by the third respondent insurance company with 7.5% interest from the date of application till its deposit, over and above the decreed amount by the Tribunal. On deposit of the amount, the appellant is allowed to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

V.GIRI
JUDGE

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